

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

DAVID DATE, JR. and ELLIOT
HANDLER, Individually and On Behalf of All
Others Similarly Situated,

Plaintiffs,

Case No. 07-CV-15474

vs.

Honorable Paul D. Borman
Magistrate Judge R. Steven Whalen

SONY ELECTRONICS, INC. and ABC
APPLIANCE, INC. d/b/a ABC
WAREHOUSE,

Defendants.

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PLAINTIFFS' MOTION TO MODIFY THE SCHEDULING ORDER

Plaintiffs, by and through their attorneys, hereby move to extend the fact-discovery cut off date and amend the September 16, 2010 Scheduling Order, stating as follows:

1. On December 27, 2010, this Court granted Plaintiffs' Motion to Extend the Discovery Cut-Off date, a request that was necessitated by, among other things, Defendants' rolling production of more than 600,000 pages of documents, which were produced in no discernible order and were not labeled as being responsive to any specific request, as well as their representations that they would be unable to produce their 30(b)(6) deponents on the dates such depositions were noticed for.

2. However, since the granting of Plaintiffs' request, Plaintiffs have still been unable to depose Defendants' witnesses given, among other things, Defendants' objections to the deposition notices and document riders. For instance, Defendants objected to producing all advertising for the televisions at issue that contained the phrase "1080p", "True 1080", "True1080", "Full 1080", and/or "Full HD 1080" at the deposition. To avoid delaying this case any longer by filing a motion to compel, Plaintiffs suggested a compromise: instead of producing such documents at the time of deposition, that Defendants merely supplement their discovery responses to comply with Fed. R. Civ. P. 34(e)(2), which requires that in answering a document production request, a party "organize and label them to correspond to the categories in the request."

3. While Defendants agreed to this compromise in part, they further indicated that it would take no less than three weeks to complete such a task, meaning that Plaintiffs will not receive the amended responses until no earlier than late February.

4. As a result, and to ensure Plaintiffs have sufficient time to take Defendants' depositions with all relevant information available, Plaintiffs request that the fact discovery cut-off date be extended by two months.¹

5. Additionally, as a result of the previous change in deadlines, other dates in the scheduling order are in disarray. For instance, Plaintiffs' merit expert report deadline is February 14, 2011, Defendants' merit expert report deadline is March 10, 2011, and Plaintiffs' rebuttal expert report deadline is due April 18, 2011, all before the current April 20, 2011 fact discovery closure date and several months before the requested fact discovery closure date. As a result, Plaintiffs request that the scheduling order be updated and modified to correspond with the timing of the previous scheduling order.

6. On February 14, 2011, pursuant to Local Rule 7.1(a), there was a conference between attorneys or unrepresented parties and other persons entitled to be heard on the motion in which the movant explained the nature of the motion or request and its legal basis and requested but did not obtain concurrence in the relief sought because Defendants indicated that they did not have sufficient time to consider the request.

Based on the foregoing, Plaintiffs respectfully request that the Court extend the fact discovery cut-off date by two months, up and until Monday, June 20, 2011 and enter the proposed modified scheduling order, a copy of which is submitted with this motion.

Respectfully Submitted,

By: /s/ Lance A. Raphael

¹ Previously, Plaintiffs asked Defendants if they would be amenable to extending the fact discovery cut-off date to 60 days after Defendant provided Plaintiffs with their amended discovery responses. However, because Defendants have not provided Plaintiffs with a firm date by which their production will be made, Plaintiffs now seek a two-month extension to ensure that Plaintiffs will have sufficient time to receive and review Defendants' responses, and to depose Defendants based thereon. Such a firm date is also necessary for entry of a modified scheduling order and should foreclose the need for any future requests for modification.

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CERTIFICATE OF SERVICE

I certify that on February 14, 2011, I electronically filed the foregoing *Plaintiffs' Motion to Modify the Scheduling Order* with the Clerk of Court using the ECF system that will send notification of such filing to all attorneys of record.

Respectfully Submitted,

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